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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCO ANTONIO  
SANCHEZ-HERNANDEZ,

Defendant.

Magistrate Case No. 08MJ0741

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

**(Pre-Indictment Fast-Track Program)**

**IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Jeffrey D. Moore, Assistant United States Attorney, and defendant MARCO ANTONIO SANCHEZ-HERNANDEZ, by and through and with the advice and consent of Charles N. Guthrie, counsel for defendant, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii) and (v)(II).

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1           2.       Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3.       Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **April 10, 2008**.

6           4.       The material witnesses, Ascencion De La Luz-Rafaela, Francisco De La Luz-Rafaela  
7 , and Abel Pena-Silva, in this case:

8                   a.       Are aliens with no lawful right to enter or remain in the United States;

9                   b.       Entered or attempted to enter the United States illegally on or about  
10 March 9, 2008;

11                  c.       Were found in a vehicle driven by defendant near El Cajon, California and  
12 that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful  
13 right to enter or remain in the United States;

14                  d.       Were paying \$2,000 to others to be brought into the United States illegally  
15 and/or transported illegally to their destination therein; and,

16                  e.       May be released and remanded immediately to the Department of Homeland  
17 Security for return to their country of origin.

18           5.       After the material witnesses are ordered released by the Court pursuant to this  
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22                   a.       The stipulated facts set forth in paragraph 4 above shall be admitted as  
23 substantive evidence;

24                   b.       The United States may elicit hearsay testimony from arresting agents  
25 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
27 of (an) unavailable witness(es); and,

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1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
7 further that defendant has discussed the terms of this stipulation and joint motion with defense  
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
10 immediate release and remand of the above-named material witness(es) to the Department of  
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT  
United States Attorney

15  
16 Dated: 3/25/08.

17   
JEFFREY D. MOORE  
Assistant United States Attorney

18  
19 Dated: 03/13/08.

20   
CHARLES N. GUTHRIE  
Defense Counsel for Sanchez-Hernandez

21 Dated: 03/13/08.

22   
MARCO ANTONIO SANCHEZ-HERNANDEZ  
Defendant

23  
24  
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**ORDER**

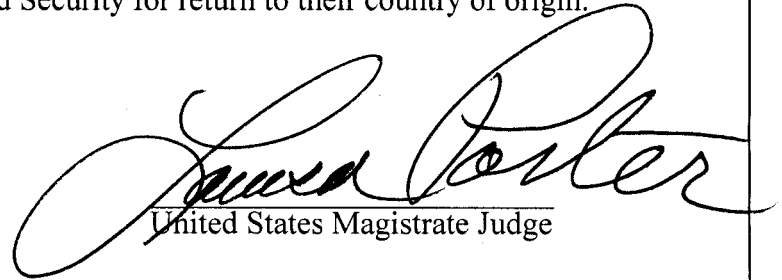
Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 3/25/08

  
United States Magistrate Judge